



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/624,660	07/25/2000	Moshe Rock	10638-037001/952/33	6658

26161 7590 05/06/2003

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT	PAPER NUMBER
----------	--------------

1771

DATE MAILED: 05/06/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/624,660

Applicant(s)

ROCK ET AL.

Examiner

Norca L. Torres-Velazquez

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-32 is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. The rejection of claims 1-18 under 35 U.S.C. 103(a) as being unpatentable over LUMB et al. (US 5312667) in view of GEORGE (US 4,425,397) has been withdrawn in view of Applicants arguments.
2. Applicant's arguments filed on February 25, 2003 have been fully considered but they are not persuasive.

- a. Applicants argue that the Fujiwara reference (secondary reference) does not teach the inclusion of yarn fibers with a refractory compound in the inner, raised, fabric layer of the fabric described by Lumb.

It is noted that the Lumb reference teaches all the limitations of the independent claim 1 except for *the particles of a refractory compound embedded within the yarn fiber* of the inner fabric layer. The Fujiwara reference teaches the use of particles of refractory compounds embedded within yarn fibers in order to provide these or fabrics made from these yarns with heat insulation properties. It is further noted that the present claims are claiming a textile fabric. While Applicants are identifying the fabric as having an inner and an outer layer, a fabric can be used from either direction.

It is also noted that the reference also teaches that the fiber of their invention also has the effect of reflecting the far infrared rays generated from a human body, and it carries out thermal conversion and not only keeps it warm, but it can acquire a double heat insulation effect. (Refer to [0008]). Therefore, Fujiwara teachings will also include the use of the particles in layers closer to the human body.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear from the claim if the claimed fleece layer is an additional layer or if the inner layer is the fleece layer. If it is an additional layer, Applicant is required to provide drawings that show the claimed structure and point out where in the specification is the structure described. For purposes of examination, the Examiner assumes that the fleece layer is the inner layer.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over LUMB et al. (US 5312667) in view of FUJIWARA (Abstract Japanese Patent 09-087901A).

LUMB et al. discloses a composite textile fabric for moving moisture away from the skin. It includes a first fabric layer comprising either a polyester or nylon material which has been rendered hydrophilic and a second fabric layer comprising at least 25% by weight of a moisture absorbent material such as cotton. The first fabric layer and the second fabric layer are formed concurrently by knitting a plaited construction. (Abstract) The reference further teaches that the

Art Unit: 1771

surface of the material in the first fabric layer is raised. (Column 1, line 40). LUMB et al. also teaches that the composite textile fabric is used in garments, including sweatshirts, sweat pants, underwear, bathrobes, and various types of exercise clothing. (Column 1, lines 50-53)

The composite fabric may be constructed as a warp or weft knit, such as a two-end fleece, three-end fleece, terry with regular plaiting, double terry, double needle raschel and tricot. (Column 2, lines 67-68 through Column 3, lines 1-2)

LUMB et al. further teach that the surface of the first fabric layer is raised by napping. The polyester or nylon layer is either round or modified cross-section, 0.3 to 6.0 denier. (Column 3, lines 30-35).

However, the reference does not disclose the use of particles of a refractory compound embedded within the yarn fibers of the inner fabric layer.

FUJIWARA et al. discloses a stocking constituted by a synthetic fiber containing a substance having a heat storing and heat insulating effects by absorbing the visible ray of the sunlight and generating heat through an energy conversion, having the improved heat insulating effect, and excellent in fashionable property. The reference further teaches that the stockings are constituted by a synthetic fiber such as nylon, polyester and an acrylic fiber containing a substance such as zirconium carbide. The reference also teaches that the fiber of their invention also has the effect of reflecting the far infrared rays generated from a human body, and it carries out thermal conversion and not only keeps it warm, but it can acquire a double heat insulation effect. (Refer to [0008]).

Since both LUMB et al. and FUJIWARA et al. are from the same field of endeavor, knitted fabrics with insulating properties, the purpose disclosed by FUJIWARA et al. would have been recognized in the pertinent art of LUMB et al.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the composite textile fabric and provide it with particles of zirconium carbide with the motivation of providing the fabric with improved heat insulation effect as disclosed by FUJIWARA et al. (Abstract)

Allowable Subject Matter

6. Claims 19-32 are allowed.
7. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach a composite textile fabric of the present invention that particularly comprises an inner fabric layer that has been treated by metal vapor deposition that further allows for the passage of liquid there through.
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 1771


CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 703-306-5714. The examiner can normally be reached on Monday-Thursday 8:30-4:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

nlt
May 5, 2003


ELIZABETH M. COLE
PRIMARY EXAMINER